

§ 536.31

32 CFR Ch. V (7-1-09 Edition)

DOD or the U.S. Armed Services. Placing a claim in the mail does not constitute filing. The first Army claims office that receives the claim will date, time stamp, and initial the claim as of the date the claim was initially received “on post,” not by the claims office. If initially received close to the SOL’s expiration date by an organization or activity that does not have a claims office, claims personnel will discover and record in the file the date of original receipt.

(b) The ACO or CPO that first receives the claim will enter the claim into the Tort and Special Claims Application (TSCA) database and let the system assign a number to the claim. The claim, whether on an SF 95 or in any other format, shall be scanned into a computer and uploaded onto the TSCA database so that it will become a permanent part of the electronic record. A joint claim will be given a number for each claimant, for example, husband and wife, injured parent and children. If only one sum is filed for all claimants, the same sum will be assigned for each claimant. However, request the claimant to name a sum for each claimant. The claim will bear this number throughout the claims process. Upon transfer, a new number will not be assigned by the receiving office. If a claim does not meet the definition of a proper claim under §§ 536.26 and 536.27, it will be date stamped and logged as a Potentially Compensable Event (PCE).

(c) The claim will be transferred if the claim incident arose in another ACO’s geographic area; the receiving ACO will use the claims number originally assigned.

(d) Non-Appropriated Fund Instrumentality (NAFI) claims that relate to claims determined cognizable under subpart K of this part will be marked with the symbol “NAFI” immediately following the claimant’s name, to preclude erroneous payment from appropriated funds (APF). This symbol will also be included in the subject line of all correspondence.

(e) Upon receipt, copies of the claims will be furnished as follows (when a current e-mail address is available and it is agreeable with the receiving party, providing copies by e-mail is acceptable):

(1) To USARCS, if the amount claimed exceeds \$25,000, or \$50,000 per incident. However, if the claim arises under the FTCA or AMCSA, only furnish copies if the amount claimed exceeds \$50,000, or \$100,000 per incident.

(2) For medical malpractice claims, to the appropriate MTF Commander/s through MEDCOM Headquarters, and to the Armed Forces Institute of Pathology at the addresses listed below.

MEDCOM, ATTN: MCHO-CL-Q, 2050 Worth Road, Suite 26, Fort Sam Houston, TX 78234-5026.

Department of Legal Medicine, Armed Forces Institute of Pathology, 1335 E. West Highway, #6-100, Silver Spring, MD 20910-6254, Commercial: 301-295-8115, e-mail: *cash@afip.osd.mil*.

(3) If the claim is against AAFES forward a copy to: HQ Army and Air Force Exchange Service (AAFES), ATTN: Office of the General Counsel (GC-Z), P.O. Box 650062, Dallas, TX 75265-0062, e-mail: *blanchp@aafes.com*.

(4) If the claim involves a NAFI, including a recreational user or family child care provider forward a copy to: Army Central Insurance Fund, ATTN: CFSC-FM-I, 4700 King Street, Alexandria, VA 22302-4406, e-mail: *riskmanagement@cfsc.army.mil*.

(f) ACOs or CPOs will furnish a copy of any medical or dental malpractice claim to the MTF or dental treatment facility commander and advise the commander of all subsequent actions. The commander will be assisted in his or her responsibility to complete DD Form 2526 (Case Abstract for Malpractice Claims).

NOTE TO § 536.30: See the parallel discussion at DA Pam 27-162, paragraph 2-9.

§ 536.31 Opening claim files.

A claim file will be opened when:

(a) Information that requires investigation under § 536.23 is received.

(b) Records or other documents are requested by a potential claimant or legal representative.

(c) A claim is filed.

NOTE TO § 536.31: See the parallel discussion at DA Pam 27-162, paragraph 2-10.

§ 536.32 Transfer of claims among armed services branches.

(a) Claims filed with the wrong federal agency, or claims that should be

Department of the Army, DoD

§ 536.34

adjudicated by receiving State offices under NATO or other SOFA, will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.

(b) If another agency has taken denial action on a claim that involves the DA, without informing the DA, and in which the DA desires to make a payment, the denial action may be reconsidered by the DA not later than six months from the date of mailing and payment made thereafter.

NOTE TO § 536.32: See also §§ 536.17 and 536.18; AR 27-20, paragraph 13-2; and the parallel and related discussion of this topic at DA Pam 27-162, paragraphs 1-19, 1-20, 2-13 and 13-2.

§ 536.33 Use of small claims procedures.

Small claims procedures are authorized for use whenever a claim may be settled for \$5,000 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27-162, paragraphs 2-14 and 2-26.

§ 536.34 Determination of correct statute.

(a) *Consideration under more than one statute.* When Congress enacted the various claims statutes, it intended to allow federal agencies to settle meritorious claims. A claim must be considered under other statutes in this part unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF 95. Prior to denial of an AR 27-20, chapter 11 claim, consider whether it may fall within the scope of subparts C, D, or F of this part, and where indicated, ques-

tion the claimant to determine whether the claim sounds in tort.

(b) *Exclusiveness of certain remedies.* Certain remedies exclude all others. For example, the Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied-in-fact, as well as governmental contract losses, or intangible property losses. Claims of this nature for \$10,000 or less may be filed in a U.S. District Court. There is no administrative remedy. While the FTCA is the preemptive tort remedy in the United States, its commonwealths, territories and possessions, nevertheless, other remedies must be exhausted prior to favorable consideration under the FTCA. The FTCA does not preclude use of the MCA or the NGCA for claims arising out of noncombat activities or brought by soldiers for incident-to-service property losses sustained within the United States. See DA Pam 27-162, paragraphs 2-15a and b for a more detailed discussion of determining the correct statute for property claims versus personal injury and death claims. In addition, it is important to consider the nature of the claim, e.g., whether the claim may be medical malpractice in nature, related to postal matter, or an automobile accident. Discussions of these and many other different types of claims are also provided herein as well as in the corresponding paragraph 2-15 of DA Pam 27-162. It is also very important to consider when a claim may fall outside the jurisdiction of the Army claims system. Some of these instances are alluded to immediately above, but for a detailed discussion of related remedies see § 536.36 of this part and paragraph 2-17 of DA Pam 27-162.

(c) *Status of Forces Agreement claims.*

(1) Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27-162, paragraph 2-15c sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in § 536.76(h) of this part.